

UNSAFE ABORTION BUSINESS, UNTIL WHEN?

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UNSAFE ABORTION BUSINESS, UNTIL WHEN?

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Abstract

Pregnancy occurs and unwanted frequently bring a big issue for women, pregnancy backgrounds were varies, there is for having sex outside marriage, incest, or pregnancy due to the factor of sex crimes such as rape and others. For a pregnant woman in a state of not having a partner is certainly not easy to survive, therefore often thought to abort appears and choose the easiest way, which is not to the doctor because it will find a variety of procedures. Then choose to go to a clinic that serves the practice of illegal abortions, such as a police case reports in February 2020 that uncovered the practice of illegal abortions in a clinic in the area of Central Jakarta. In terms of the application of positive law in Indonesia, the problem was raised again, namely how the supervision and application of criminal law against illegal abortion business ?. When people are free to choose, the consequences will increase the maternal mortality rate itself. Should the birth of regulations governing therapeutic abortion, safe abortion will be the answer to the fate of women in the future. Keywords: abortion, illegal, women

BACKGROUND

Abortion is a topic that is quite often discussed because these cases occur in almost all parts of the world until now still be the pros and cons, some of them consider that abortion is murder and are not allowed ever. The antiaborsionis argue that abortion is unethical and unjustifiable (Alison Frater, Catherine Wright, 1995, p10-11). As a result of abortion is prohibited, maternal mortality and morbidity in Indonesia to be high because the mother seeking the untrained personnel, thus unsafe abortions (unsafe abortion).

Today many women get pregnant out of wedlock and have an abortion as a sign of moral degradation. Dadang Hawari (2005) states that an unwanted pregnancy is not a reason to kill a fetus, because the fetus (baby) is a creature of God created, why is it killed? According to Dadang Hawari, what was wrong was his adultery or rape, not his fetus.

Data from WHO says that every year there are 56 million cases of abortion carried out in the world, in Indonesia in 2016 it reached approximately 2 million cases, of which 30% were carried out by adolescent groups. Abortion until now has been an endless debate: between the Prochoice group, which is the group whose view states that the decision to abort or maintain the womb is an absolute right of the mother containing the baby and the Prolife group is a group whose views are against abortion, this group holds ²³ that the fetus has the right to life that cannot be taken away by anyone, including the mother who contains it. An abortion is tantamount to murder, and murder is

a very big sin. Therefore, adherents of this prolife understanding are very much against abortion. According to them, legalizing abortion is against religion because this prolife group mostly comes from religious people.¹

Actually, abortions have occurred since ancient times, where in the handling of abortion, in ways that are used include ways according to medical protocol as well as traditional methods, which are performed by doctors, midwives and TBAs, both in town- major cities and in remote areas. Moral and religious conflict is the biggest problem which until now still makes it difficult to agree on an abortion policy. ⁶ Therefore, abortion is illegal and incompatible with medical methods are still running and remains a major problem that continues to threaten women of childbearing age. Surveys and research conducted by the Worldometer, the American Library Association (ALA) or the American librarians association, that the death by the act of abortion reached 41.9 million people during 2018.²

Until now, the practice of abortion continues, both legal and illegal. In fact, according to Azrul Azwar, the contribution of illegal abortion in Indonesia reaches approximately 50% of the maternal mortality rate (MMR), and the maternal mortality rate in Indonesia (MMR) is the highest rate in Asia. Then the question becomes that it is necessary to immediately legalize abortion in Indonesia, because until now this abortion has not been legalized.³ Legalized abortion as a form of women's emancipation attitude has been so advanced that every woman has the right to take care of his own body. In the Netherlands, abortion is permissible with a minimum age of three months.⁴

The Health Statistics Profile in 2019 presents statistics and indicators about the health of the population in Indonesia, a study of four topics related to stunting, smoking behavior, maternal health, and household health expenditure.⁵

¹ <https://tirto.id/dhMJ> accessed on May 1, 2020, at 10:10 p.m.

² https://www.kompasiana.com/rinto_simorangkir/5c346440bde57546223bf098/aborsi-penyebab-kematian-nomor-1-kalahkan-kanker-indonesia-butuhkan-uu-prostitusi

³ Kees Bertens, 2002, *Abortion as an ethical issue*, Gramedia Widiasarana Indonesia, Jakarta, p.72

⁴ Fred Ameln, *Kapita selectors of medical law*, Grafikatama Jaya Publisher, Jakarta, 1991.

⁵ <https://www.bps.go.id/publication/2019/12/30/9d583b7e2bd81fada82375e0/profil-statistik-kesehatan-2019.html>

PROBLEM

Many clinics who practiced illegal abortions in Jakarta, in February 2020, police dismantle illegal abortions at a clinic in the area of Central Jakarta, the data disclosed to the media that the clinic is already dealing with 1632 patients, of which about 903 people have had abortions.⁶ The problem here is how the application of criminal law to illegal abortion business?

RESEARCH METHODS

This research is descriptive analysis that is to describe and analyze the issues raised which aims to mendeskriptifkan concretely about the review jurisdiction over abortion business in terms of the Health Act No. 36 of 2009, to Law No. 29 of 2004 on the practice of medicine. This research approach is done is juridical normative and juridical empirical research done by first examining the materials library of the law relating to the problem and then look objectively through the provisions of the legislation in force as well as seeing the realities that exist in community.

DISCUSSION

Abortion or in the medical world is known as "abortion", meaning the release of the conception (the meeting of the egg cell and sperm cell) before the fetus can live outside the womb. Abortion is different from miscarriage or keluro (Javanese). Abortion or abortion is a termination (termination) of deliberate pregnancy (abortion provocatus), which is a pregnancy that is provoked in various ways so that an abortion occurs. While miscarriage is a pregnancy stopped because of natural factors (spontaneous abortion) there is no accident. Abortion provocatus is another term that is officially used in medicine and law. This is a process of terminating the life of the fetus before being given the opportunity to grow, there is a deliberate effort.

According Fact Abortion, Info Kit on Women's Health by the Institute for Social, Studies you Action, in March 1991, the medical term "abortion" is defined as the termination of pregnancy after implantation of eggs (ova) are fertilized womb (uterus), before the fetus (fetus) at 20 weeks, followed by complaints of pain in the lower abdomen like a crumpled sore.

Abortion, according to Olson, DeFrain, & Skogrand (2011) is an action to terminate a pregnancy before fetal products of conception expenditure can live outside the womb. This action must be

⁶<https://www.suara.com/news/2020/02/18/140157/modus-aborsi-klinik-paseban-hamil-di-luar-nikah-Requirements-work> accessed 7 May 2020

intentional to be categorized as an abortion, either with the help of an obstetrician, medicine, traditional medicine, acupuncture to massage the lower abdomen of a woman.⁷

According to Indonesian dictionary definition of abortion is an abortion of her own.⁸ Abortion in the opinion of Eastman is a state of dissolution of a pregnancy in which the fetus is not capable of standing alone outside the uterus, because the weight of the fetus that is located between 400 - 1000 grams or pregnancy less than 28 weeks, another opinion by Jeffcoat said the definition of abortion that expenditure of the conceptus before 28 week, the fetus is not viable by law, and in the opinion of Holmer said that the definition of **abortion is interruption of pregnancy before the 16th week** where placentation unfinished.⁹

Partial Birth Abortion, the term political / legal in medical terms is known as dilation and extaction., The action starts with giving drugs to pregnant women, with the goal of keeping the cervix opens prematurely. Furthermore, by using a special tool, the doctor turns the baby, so that out first is his feet. Then the baby is pulled out, but not completely, so that the **baby's head remains in the mother's body**. then **the doctor stabs the baby's head with a sharp instrument**, and sucks the baby's **brain** so that the baby dies, after which the fetus is sucked out of the uterus.

In medicine, abortion is divided into two groups: first, Spontaneous abortion or natural abortion occurs by itself without any external influences, without mechanical or medical factors. For example because sperm or egg cells are not of good quality, or because there is negligence in the shape of the uterus, it can also be caused by diseases, such as syphilis, acute infections with high fever in malaria.¹⁰

Second is provocatus therapeutics / medical abortion abortion, which is caused by human actions, can occur either because it is driven by medical reasons, for example because pregnant women suffer from an illness. Provocatus abortion can also be done at a critical time to help the mother's soul, pregnancy needs to end, for example in pregnancy outside the womb, severe heart disease, severe tuberculosis, high blood pressure, breast cancer, cervical cancer. The indications for an abortion provocatus therapeuticum must be determined at least by two specialist doctors, one from an obstetrician and another from an internist or a cardiologist.

⁷ <https://ekspresionline.com/2019/02/07/mempertanyakan-kembali-kebijakan-aborsi-di-indonesia/>

⁸ Indonesian dictionary

⁹ Rustam Mochtar, Synopsis Obsetetri, EGC Publisher, Jakarta, 1998, page. 209

¹⁰ Taber Ben-zion, Kedaruratan Obsetetri dan Gonekologi, Penerbit EGC, Jakarta, 1994, Hal 56

Abortions are further divided into spontaneous abortions that occur as a result of physical conditions that are down, hormonal imbalances in the body, accidents, and other causes. Artificial abortion, which is divided into provocatus therapeuticus abortion (legal artificial) and provocatus criminalist abortion (illegal artificial).

Provocate criminalist abortion This is a deliberate abortion by both the mother and others with the consent of the pregnant woman. This is done for certain reasons, such as embarrassment due to pregnancy because of pregnancy out of wedlock. These abortions are usually carried out in the interests of the offender, whether from women who abort their birth or someone who has an abortion such as a doctor medically or by a TBA whose purpose is to save or treat the mother, by an incompetent medical or non-medical person, and does not meet the requirements and methods that are justified by laws and regulations. usually in it contains elements of crime or crime.

²⁰ According to the Black's Law Dictionary, abortion is defined as "the spontaneous or artificially induced expulsion of an embryo or fetus" with this limitation, then abortion is divided into spontaneous abortion (due to health problems in the mother or fetus) and deliberate abortion (artificial or provoked). Non-spontaneous abortion is again divided into medical abortion (abortion provocatus medicinalis) and non-medical criminalism (often called abortion provocatus criminalis).¹¹

Nowadays, where medical science has advanced, abortion or abortion is done by suctioning, using a suction pump or curettage (cleaning with a curette) which results in massive bleeding. This action clearly poses a high risk, not to mention the possibility of infection based on public view, an event said to be abortion provides a limit that is if the feutus was out of the womb before 28 weeks pregnant and the weight of the fetus that came out 1000 grams.¹²

The definition of abortion according to the law is the act of stopping the pregnancy or killing the fetus before the time of birth, regardless of the age of the womb, is also not questioned, whether the abortion of the baby is born alive or dead (jurisprudence Hoge raad HR 12 April 18980. What is considered important is that when pregnancy abortion is carried out, the content is still alive (HR 1 November 2897, HR 12 April 1898) The definition of abortion according to the

⁸ Sofwan Dahlan, 2005 *Hukum Kesehatan rambu-rambu bagi profesi dokter*, Edisi 3, Penerbit Universitas Diponogoro, Semarang, Hlm.142

¹¹ Manopo Abas, Aborsi, 1974 *Kumpulan Naskah-Naskah Ilmiah dalam Simposium Aborsi di Surabaya*, Departemen Kesehatan RI, Jakarta, Hal.20

¹²

law is of course different from the notion of abortion according to medicine, namely the existence of deliberate factors and the absence of gestational age factors.¹³

Basically, anyone is prohibited from having an abortion based on Article 75 paragraph (1) of Law Number 36 Year 2009 Concerning Health. Exceptions to the prohibition of having an abortion are given only in the following two conditions: first an indication of medical emergencies detected from an early age of pregnancy, secondly a pregnancy due to rape which can cause psychological trauma to victims of rape. However, the act of abortion stipulated in Article 75 paragraph (2) of the Health Act can only be done after going through counseling and / or pre-action counseling and ending with post-action counseling in accordance with article 75 paragraph 3 carried out by competent and competent counselors.¹⁴

Article 80 paragraph (1) of the health law provides even more severe penalties to anyone who commits a certain medical act (abortion) that is not in accordance with article 15 paragraphs (1) and (2), ie with a maximum imprisonment of 15 years and a fine 500 million rupiah at most. In the positive criminal law in Indonesia the regulation of abortion is grouped into crimes against life, regardless of the age of the pregnancy, contained in Articles 346, 347, 348, 349 and 350 of the Criminal Code. According to the provisions contained in Articles 346, 347 and 348 of the Criminal Code, criminal abortion includes the following acts: first is abortion (*Afdrijving van de vrucht* or *vrucht afdrijving*), then secondly killing content (*de dood van de vrucht verooraken*) or *vrucht doden*)¹⁵

Article 229: Anyone who intentionally treats a woman or orders her to be treated, is notified or raises hope, that because the treatment can be aborted pregnancy, threatened with imprisonment of up to four years or a maximum fine of three thousand rupiah. Article 346: A woman who intentionally aborts or turns off her womb or orders someone else to do so is threatened with a maximum sentence of four years in prison. Article 347: (1) Anyone who intentionally aborts or kills a woman's womb without his consent is threatened with a maximum prison sentence of twelve years. (2) If the act results in the death of the woman, she is threatened with a maximum imprisonment of fifteen years. Article 348: (1) Anyone who intentionally aborts or kills a woman's womb with his consent, is threatened with a maximum imprisonment of five years and six months.

¹³ Bagian Kedokteran Forensik FKUI, 1997, Ilmu Kedokteran Forensik, Penerbit FKUI, Jakarta, hlm 159

¹⁴ [Undang Undang Nomor 36 Tahun 2009 Tentang Kesehatan](#) pasal 75

¹⁵ Musa Perdana Kusuma, 1981, *Bab-bab Tentang Kedokteran Forensik*, Ghalia Indonesia, Jakarta, Hal. 192.

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(2) If the act results in the death of the woman, she is threatened with a seven-year prison sentence.
¹
Article 349: If a doctor, midwife or medicine person helps to commit a crime under article 346, or helps to commit one of the crimes in articles 347 & 348, then the crime specified in that article can be increased by one third and revoked the right to carry out a livelihood in which crime committed.¹⁶

Abortion or abortion is a dilemma which is now a social phenomenon, because demand for restoration of the content is getting more and more, while abortion performed legally requires very difficult procedures, then there is no official practice specifically dealing with abortion, then illegal or illegal practices are growing rapidly . In fact, besides safety is not guaranteed, this practice sometimes opens opportunities for extortion and complications such as bleeding due to injury, shock due to vasovagal reflexes, air embolism occurs when spraying fluid into the uterus, vagus inhibition almost always occurs in the act of abortion, drug poisoning / abortivum substances infection / sepsis and others.¹⁷

In addition, choosing abortion is encouraged because of the understanding that ¹² women have the rights to their own bodies. The law on the right of women's autonomy makes this right to self enter the area of abortion, on the part of women feeling entitled to determine their own destiny for the existence of unwanted pregnancy (J.Guwandi, 2000, p.22). ⁴ On the other hand, in terms of religious teachings, any religion will not allow humans to take action to stop the pregnancy for any reason.

Moral and religious conflict is the biggest problem which until now still makes it difficult to agree on an abortion policy. ⁶ Therefore, abortion that is illegal and incompatible with medical methods is still ongoing and remains a major problem that is still, threatening. The existence of conflicts both morally and socially with religion and law makes ⁵ abortion a problem that contains controversy. In terms of morals and society, it is difficult to let a mother who has to treat unwanted pregnancies mainly because of the results of rape, the results of commercial sex (with commercial sex workers) and mothers who know that the fetus they are carrying has severe physical disability. In addition, many women feel they have the right to control their own bodies. On the other hand,

¹⁶ Kitab Undang-Undang Hukum Pidana

¹⁷ Bagian Kedokteran Forensik FKUI, 1997, *Ilmu Kedokteran Forensik*, Penerbit FKUI, Jakarta, Hlm 162-3.

⁴ in terms of religious teachings, any religion will not allow humans to take action to stop the pregnancy ³ for any reason.¹⁸

Meanwhile, from a legal perspective, there are still debates and contradictions from the pros and cons regarding the perception or understanding of existing laws to date. ⁴ Both of the Law on health, the law of medical practice, the criminal law (KUHP), the Law on the Elimination of Domestic Violence (domestic violence), and the Law on Human Rights (HAM). Positive legal arrangements and other regulations forbid abortion, encouraging the emergence of illegal abortion practices carried out by both ³ formal and informal medical personnel. Both in accordance with medical operational standards or not, also the possibility of complications from mild to fatal.

The term abortion is actually not found in the Book of criminal law (KUHPidana), in the Criminal Code known only the term abortion, so when viewed from the Criminal Code and the history of abortion laws that are prohibited aimed at the fruit of the living content, namely the makers of living content, namely the makers of abortion the law assumes that life has begun from the moment of conception. The law does not matter whether the meeting of the cell (conception) has had a pregnancy or not, and the law only explains that the content has a juridical meaning, so killing or killing the fruit of the womb is included in the crime against the lives of prospective humans. Therefore abortion provocatus in any form is prohibited in law.¹⁹

Because in carrying out the act of abortion on medical indications, the doctor needs to take security measures by consulting an experienced obstetrician with the following conditions:²⁰

- ³ 1. Performed by health workers who have the expertise and authority to do it his (ie an obstetrician and gynecologist) in accordance with professional responsibilities.
2. Must ask the consideration of a team of experts (other medical experts, religion, law, psychology)
- ¹³ 3. There must be written consent from the patient or her husband or immediate family
4. Performed in health facilities that have adequate personnel / equipment, appointed by the government
5. Procedure withheld

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¹⁸ Loqman, Loebby, 2003, *Jurnal Obsetri dan Ginekologi Indonesia*, Yayasan Bina Pustaka Sarwono Prawirohardj, ²⁵ogyakarta, Hal 232

¹⁹ ¹⁴ndrik, 2014, *Etika dan Hukum Kesehatan*, Penerbit EGC, Jakarta, Hlm.94.

²⁰ Iwan Aflanle, Nila Nirmalasari, Moh.Hendy Arizal, 2017, *Ilmu kedokteran forensic & medikolegal*, RajaGrfindo Persada, Jakarta, Hlm.206-7

6. Medical documents must be complete

Pro groups on abortion are based more on humanitarian principles, namely: the fact that illegal abortion threatens public health, both social justice demands equal access for the rich and poor to have an abortion, third supports the right of women to control their own bodies (woman's right to control her own body).

Whereas the contra group to legalize abortion is based more on fetal rights, namely: first the right to be born alive (the right unborn baby to be born alive), and the right to be born normal (the right unborn baby to be born normal).²¹

Moral and religious conflict is the biggest problem which until now still makes it difficult to agree on an abortion policy. Therefore, abortion that is illegal and incompatible with medical methods is still ongoing and remains a major problem that is still, threatening. The existence of conflicts both morally and socially with religion and law makes abortion a problem that contains controversy.

In terms of morals and society, it is difficult to let a mother who has to take care of an unwanted pregnancy, especially because of the results of rape, the results of incest / bloedschande, pregnant as a result of her work as a commercial sex worker (CSW) and mothers who know that the fetus they contain have severe physical disability. In addition, many women feel they have the right to control their own bodies. On the other hand, in terms of religious teachings, it is certain that any religion will not allow humans to stop the pregnancy for any reason.²²

There is much debate about abortion by rape victims. That is because there is no article that clearly regulates the abortion of rape victims. During this time many views have interpreted that abortion of rape victims is equated with medical indications so that it can be done because psychological disorders against the mother can also threaten the life of the mother. However, on the other hand there are those who view that abortion against rape victims is a criminal abortion because it does not endanger the life of the mother and in Health Law Number 23 of 1992 is not clearly contained in the article

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²¹ Sofwan Dahlan, 2005 *Hukum Kesehatan rambu-rambu bagi profesi dokter*, Edisi 3, Penerbit Universitas Diponogoro, Semarang, Hlm 144-5.

²² Loqman, Loebby, 2003, *Jurnal Obsetri dan Ginekologi Indonesia*, Yayasan Bina Pustaka Sarwono Prawirohardjo, Yogyakarta, Hal 232

pregnant as a result of her work as a commercial sex worker (CSW) ⁵ and mothers who know that ⁴ the fetus they contain have severe physical disability. In addition, many women feel they have the right to control their own bodies. ⁴ On the other hand, in terms of religious teachings, it is certain that any religion will not allow humans to stop the pregnancy for any reason.

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In addition, based on Health Law No. 36/2009, medical treatment (abortion), ¹² as an effort to save pregnant women and / or their fetuses, can be carried out ³ by health workers who have the expertise and authority to do so and are carried out in accordance with professional responsibilities and expert team considerations. . This shows that the abortion was legal or could be justified and protected by law.

With so many reasons for abortion, encouraging the ³ practice of illegal abortion, which is carried out by both formal and informal medical personnel. Both ¹¹ those that comply with medical operational standards and those that do not. Before the issuance of Law Number 36 Year 2009 ²⁴ regarding health, the provisions regarding abortion are regulated in Law Number 23 of 1992. Whereas the provisions of the Health Law contain abortions carried out on indications of medical emergencies that threaten the lives of mothers and babies born with disabilities so that it is difficult to live out of the womb.

Illegal clinics that offer abortion are commonly found in various places in the country that do not legalize abortion, but usually the rates are so high that not all women who want an abortion can access it. then the patient chooses to be a shaman who is considered relatively more economical, but of course the methods used are different from medical procedures, so from a medical standpoint, it cannot be accounted for as a result of various complications such as death

while undergoing an abortion, unwanted pregnancy itself actually can also already be pose a threat, including in countries that have legalized abortion.²³

Unwanted pregnancy generally ends with absorption, although there is no medical indication, the cause can be pregnancy that occurs outside of marriage, pregnancy can be maintained or terminated. If the safety can be maintained and accepted by the family, it can be an advanced pregnancy with or without marriage, and the baby can be raised (single parent) or handed over to the party who wants to adopt. Here applies the paradigm that "every child should be a wanted child."²⁴

Highlighting the issue of abortion, the role of IDI is very decisive because actually morally the doctors (IDI members) are bound by oaths and medical ethics by becoming a noble profession and mandate A law that is not released even between doctors and patients enters therapeutic contracts. Then the Indonesian Ulema Council (MUI) as the authority holder regarding the rules of the Islamic religion in Indonesia emphasized that doctors cannot arbitrarily judge, interpret and then conclude oaths, ethics and religious teachings according to their own tastes.

CONCLUSION

Article used by the police to ensnare suspects including doctors and medical personnel who assist the practice of illegal abortion will be threatened or convicted, for doctors being prosecuted in accordance with Article 83 Juncto Article 64 of Law Number 36 of 2014 concerning Health Workers and or Article 75 paragraph (1), Article 76, Article 77, Article 78 of Law Number 29 Year 2004 concerning Medical Practices and Article 194 Jo Article 75 Paragraph (2) of Law Number 36 Year 2009 concerning Health of Article 55, 56 of the Criminal Code.

This means that a doctor who has an abortion violates the doctor's oath, which says that doctors must respect human life from the moment of conception. then in article 10 the Medical Code of Ethics strictly forbids the abortion of provacatus and euthanasia, so that doctors should be guided by the oath of doctors and KODEKI not to have an abortion without medical indication. Suggestions in other circumstances, if a person is pregnant because of a crime of decency or because of a discordant pregnancy, icest, if a woman refuses her control, this condition should be

²³ Sofwan Dahlan, 2005, *Hukum Kesehatan rambu-rambu bagi profesi dokter*, Edisi 3, Penerbit Universitas Diponogoro, Semarang, Hlm 143

²⁴ Muh. Dikman Angsar, 2006, *Bioetika : Masalah, tantangan dan peluang*, Penerbit yayasan Percik, Tahum VI No.1.2006, Salatiga, Hlm. 140

the time to encourage the birth of regulations governing therapeutic abortion. Because by developing reproductive health with a human rights approach, it means thinking about the fate of future women, in accordance with the needs, desires and hopes of the women themselves.

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